

After reviewing the record and considering the arguments of the parties, the Appeals Board finds, for the reasons stated below, claimant has established that she gave notice within ten (10) days as required by K.S.A. 44-520.

Claimant originally alleged in her Application for Hearing that she was injured on July 29, 1994. The Administrative Law Judge found that claimant did not give notice of the injury until September 8, 1994, and therefore, was barred from pursuing her claim. The Appeals Board agrees that claimant did not give notice of a work-related injury until approximately September 8, 1994. This would be more than ten (10) days from the July 29, 1994, injury. However, the Appeals Board finds from the record that claimant continued to aggravate her injury which initially occurred on July 29, 1994, when on that date she injured her back pushing a box. She testified that in the course of her work her back thereafter continued to get worse until the end of August when she experienced continuous pain in the hip area. Her treating physician, Dr. John R. Toth, indicates the injury reached its apex on September 8, 1994, when she finally went to the emergency room.

At the beginning of the Preliminary Hearing, claimant notified the Administrative Law Judge and respondent that she was claiming July 29, 1994, as the injury date with continuing aggravation thereafter. The amended allegation is supported in the record and reflects aggravation up to within ten (10) days of her emergency room visit of September 8, 1994. The Appeals Board, therefore, finds that the notice of September 8, 1994, was within ten (10) days of injury and holds that the finding by the Administrative Law Judge should, therefore, be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Order entered by Administrative Law Judge Floyd V. Palmer, dated December 28, 1994, should be, and the same is hereby, reversed and the claim is remanded to the Administrative Law Judge for findings regarding claimant's need for medical and/or temporary total disability benefits.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Michael Unrein, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director